

## REMARKS

The election/restriction set forth in the above-identified Office Action has been carefully reviewed, but the undersigned has been unable to determine the meets and bounds of the election/restriction. The text of the election/restriction is not clear in regard to its identification of species, potentially subspecies thereof, and the claims which the Examiner believes to be directed to the species and potential subspecies. Therefore, any response to the requirement as stated in the Office Action would be based upon conjecture, and it is believed that the election/restriction requirement provided in the Office Action should be clarified in a subsequent Office Action before any response is required.

In the interest of advancing the prosecution of the present application, and without any admission as to the patentability or unpatentability of any disclosed species with respect to another, the applicants propose to provisionally elect a species directed to implantable biomaterial devices comprising a collagenous biomaterial, wherein the biomaterial comprises submucosa. It is believed that all claims presently pending would be generic to such elected species. Other specifically disclosed (and non-elected) collagenous biomaterial species include pericardium, basement membrane, and amniotic membrane (see e.g. page 8, lines 23-24).

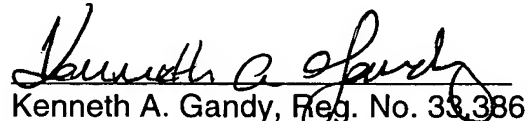
In further comment on the election/restriction requirement, and in particular to the classification and searching aspects, it is noted that all claims are directed to implantable biomaterial devices that include a collagenous

biomaterial. There is considerable overlap in the classification of collagenous biomaterials to be used in treatment, including those derived from animal sources. Accordingly, the search and examination of all of the species encompassed by the generic claims together will be reasonable, and will not present an undue burden upon the Examiner. On this basis, restriction of the claims, in any form, is respectfully traversed.

In view of the foregoing, favorable consideration and examination of all claims is requested. The Examiner is also asked to please contact the undersigned attorney if there are any questions about this submission, or to seek a telephonic election to any further restriction/election requirement to be made.

Respectfully Submitted,

By:

  
Kenneth A. Gandy, Reg. No. 33,386  
Woodard, Emhardt, Moriarty,  
McNett & Henry LLP  
Bank One Center/Tower  
111 Monument Circle, Suite 3700  
Indianapolis, Indiana 46204-5137  
(317) 634-3456